

# United States District Court

EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

KELLY R. HARRINGTON

v.

NATIONAL ENTERPRISE SYSTEMS, INC,  
and NCO FINANCIAL SYSTEMS, INC.

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Case No. 4:08cv422  
(Judge Schneider/Judge Mazzant)

## **MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636. On February 18, 2010, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that National Enterprise Systems, Inc.'s ("NES") Fed. R. Civ. P. Rule 12(b)(1) Motion to Dismiss be GRANTED with prejudice and Judgment be entered in favor of Plaintiff against NES in the amount of \$3,000, plus reasonable costs and reasonable attorney's fees.

NES objects that the Magistrate Judge recommended that Plaintiff recover \$3,000, plus reasonable costs and attorney's fees, based upon the fact that Plaintiff, although an attorney, is not entitled to attorney's fees. Since the issue of attorney's fees and costs is typically addressed post-judgment, it appears that the Magistrate Judge did not consider the issue whether Plaintiff, as a pro se, is entitled to attorney's fees. The Court will retain jurisdiction to determine the amount of reasonable attorney's fees and costs, if any, that should be awarded. The Court, having made a *de novo* review of the objections raised by Defendant, is of the opinion that the findings and conclusions

of the Magistrate Judge are correct, and the objections are without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this Court.

It is, therefore, **ORDERED** that National Enterprise Systems, Inc.'s ("NES") Fed. R. Civ. P. Rule 12(b)(1) Motion to Dismiss (Dkt. #35) is GRANTED with prejudice and Judgment is entered in favor of Plaintiff against NES in the amount of \$3,000.

**IT IS SO ORDERED.**

**SIGNED this 8th day of March, 2010.**

  
MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE